

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 665

By: Smith

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 727, as amended by Section 2, Chapter 320, O.S.L. 1997, 842, Section 1, Chapter 287, O.S.L. 1995, 1172.1, 1173, 1173.4, and 1183, as amended by Sections 4, 6, and 15, Chapter 338, O.S.L. 1995, and 1190, as last amended by Section 16, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Sections 727, 1101.1, 1173, 1173.4, 1183, and 1190), which relate to interest on judgments, debtor's appearance and disclosure of assets, offers of judgment, prejudgment and postjudgment summons, noncontinuing earnings garnishment, continuing earnings garnishment, examination of garnishee by deposition or interrogatories, and costs; providing method for calculation and accrual of postjudgment interest when rate of interest is specified in contract; allowing subpoena of judgment debtor by attorney of judgment creditor; providing for certain costs and limited attorneys fees; excluding costs and attorneys fees from offer of judgment; providing for amendment of prejudgment or postjudgment garnishment; providing for issuance of alias or additional summons; providing for reduction of garnishment under certain circumstances; updating language; increasing time to commence certain discovery on garnishee; increasing time for garnishee response to certain request; amending Section 5, Chapter 194, O.S.L. 1995 (42 O.S. Supp. 1998, Section 49), which relates to ambulance service provider liens; clarifying when certain action may be brought; requiring certain liens to include certain expenses and costs; amending 43 O.S. 1991, Section 209, which relates to obligations of husbands and wives; providing for joint and several liability of husband and wife for certain necessities; repealing 12 O.S. 1991, Sections 690, 691, 692, 693, 694 and 695, which relate to confessions of judgment; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 727, as amended by Section 2, Chapter 320, O.S.L. 1997 (12 O.S. Supp. 1998, Section 727), is amended to read as follows:

Section 727.

POSTJUDGMENT INTEREST

A. Except as otherwise provided by this section, all judgments of courts of record shall bear interest at a rate prescribed pursuant to subsection I of this section.

B. Judgments against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to subsection I of this section, but not to exceed ten percent (10%), from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the date ~~as of~~ on which the judgment is rendered, irrespective of the date ~~as of~~ on which the judgment is filed with a court clerk or with a county clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment,

together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year, or part of a calendar year, a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate ~~therein~~ shall apply to the judgment debt and be specified in the journal entry of judgment. ~~Said~~ The rate shall not exceed the lawful rate for ~~such~~ the obligation. Postjudgment interest shall be calculated and accrued in the same manner as prescribed in subsection C of this section.

#### PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on said verdict at a rate prescribed pursuant to subsection I of this section from the date the suit resulting in the judgment was commenced to the date of verdict. The interest rate for computation of prejudgment interest shall begin

with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is rendered, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section, but not to exceed ten percent (10%) from the date the suit was commenced to the date of verdict. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is rendered, whichever first occurs. Beginning on the first day of

January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each such calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on ~~said~~ the award shall begin to accrue as of the date the judgment is rendered by the trial court.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing either postjudgment interest or prejudgment interest as authorized by this section, interest shall

be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

J. For purposes of computing postjudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all judgments of the district courts rendered on or after January 1, 1998. Effective January 1, 1998, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, 1998.

K. For purposes of computing prejudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all actions which are filed in the district courts on or after January 1, 1998, for which an award of prejudgment interest is authorized by the provisions of this section.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 842, is amended to read as follows:

Section 842. A. At any time after a final judgment, order, or decree is filed, on application of the judgment creditor, a judge of the court in which the final judgment, order, or decree was rendered, shall order the judgment debtor to appear before the judge, or a referee appointed by the judge, at a time and place specified in ~~such~~ the order, to answer concerning ~~his~~ the judgment debtor's property. The judge may, by ~~his~~ order, enjoin the judgment debtor from alienating, concealing, or encumbering any of ~~his~~ the judgment debtor's nonexempt property pending the hearing and further order of the court. Upon the judgment debtor's disclosure of any nonexempt property, ~~such~~ proceedings as provided by law may be had

for the application of ~~such~~ the property ~~toward~~ to the satisfaction of ~~said~~ the judgment.

B. At any time after a final judgment, order, or decree is filed, an attorney for a judgment creditor may subpoena the judgment debtor pursuant to Section 2004 of this title to appear at any place in the county in which the judgment, order, or decree was rendered, or the judgment debtor's county of residence, to answer concerning the judgment debtor's property. The judgment debtor shall not be entitled to an attendance fee or mileage.

C. In addition to sums otherwise due under a final judgment, order, or decree if an order or subpoena is served upon the judgment debtor under this section, the judgment creditor shall be entitled to costs of service and, if represented by an attorney, to an attorney's fee of Seventy-five Dollars (\$75.00); provided, attorney's fees relating to a judgment, order, or decree shall not exceed One Hundred Fifty Dollars (\$150.00) in any twelve-month period.

SECTION 3. AMENDATORY Section 1, Chapter 287, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1101.1), is amended to read as follows:

Section 1101.1 A. Actions for personal injury, wrongful death, and certain specified actions.

1. Subject to the provisions of paragraph 5 of this subsection, after a civil action is brought for the recovery of money as the result of a claim for personal injury, wrongful death, or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs or attorneys fees otherwise recoverable. If an

offer of judgment is filed, each plaintiff to whom an offer of judgment is made shall, within ten (10) days, file:

- a. a written acceptance or rejection of such offer, or
- b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If the plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment directed to each defendant who has filed an offer of judgment. If a counteroffer of judgment is filed, each defendant to whom the counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. In the event the plaintiff rejects the offer(s) of judgment and the judgment awarded the plaintiff, exclusive of any costs or attorneys fees otherwise recoverable, is less than the final offer of judgment, then the defendant filing the offer of judgment shall be entitled to recover reasonable litigation costs and reasonable attorneys fees incurred by that defendant from the date of filing of the final offer of judgment until the date of the verdict. Such costs and fees may be offset from the judgment entered against the offering defendant; provided, however, that prior to any such offset, the plaintiff's attorney may:

- a. exercise any attorneys lien claimed in an amount not to exceed twenty-five percent (25%) of the judgment, and
- b. recover the plaintiff's reasonable litigation costs, not to exceed an additional fifteen percent (15%) of the judgment or Five Thousand Dollars (\$5,000.00), whichever is greater.

4. In the event a defendant rejects the counteroffer(s) of judgment and the judgment awarded to the plaintiff is greater than the final counteroffer of judgment, the plaintiff shall be entitled to recover reasonable litigation costs and reasonable attorneys fees incurred by the plaintiff from the date of filing of the final counteroffer of judgment until the date of the verdict. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. The provisions of this subsection shall apply only where the plaintiff demands in a pleading or in trial proceedings more than One Hundred Thousand Dollars (\$100,000.00), or where the defendant makes an offer of judgment more than One Hundred Thousand Dollars (\$100,000.00). Any offer of judgment may precede the demand.

B. Other actions.

1. After a civil action is brought for the recovery of money or property in an action other than for personal injury, wrongful death or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall not be deemed to include any costs and attorneys fees otherwise recoverable. If an offer of judgment is filed, the plaintiff or plaintiffs to whom the offer of judgment is made shall, within ten (10) days, file:

- a. a written acceptance or rejection of the offer, or
- b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If a plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment to each defendant who has filed an offer of judgment and the claim or claims which are the subject thereof. If a counteroffer of judgment is filed, each defendant to whom a counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or is deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff, exclusive of any costs or attorneys fees otherwise recoverable, is less than one or more offers of judgment, the defendant shall be entitled to reasonable litigation costs and reasonable attorneys fees incurred by the defendant with respect to the action or the claim or claims included in the offer of judgment from and after the date of the first offer of judgment which is greater than the judgment until the date of the judgment. Such costs and fees may be offset from the judgment entered against the offering defendant.

4. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff, exclusive of any costs or attorneys fees otherwise recoverable, is greater than one

or more counteroffers of judgment, the plaintiff shall be entitled to recover the reasonable litigation costs and reasonable attorneys fees incurred by the plaintiff with respect to the action or the claim or claims included in the counteroffer of judgment from and after the date of the first counteroffer of judgment which is less than the judgment until the date of the judgment. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. An award of reasonable litigation costs and reasonable attorneys fees under paragraph 3 of this subsection shall not preclude an award under paragraph 4 of this subsection, and an award under paragraph 4 of this subsection shall not preclude an award under paragraph 3 of this subsection.

6. This subsection shall not apply to actions brought pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes.

C. Evidence of an offer of judgment or a counteroffer of judgment shall not be admissible in any action or proceeding for any purpose except in proceedings to enforce a settlement arising out of an offer of judgment or counteroffer of judgment or to determine reasonable attorneys fees and reasonable litigation costs under this section.

D. This section shall apply whether or not litigation costs or attorneys fees are otherwise recoverable.

E. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

F. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1172.1, is amended to read as follows:

Section 1172.1 A. A garnishee summons shall not be issued in any action prior to judgment until:

1. Defendant has been served with a notice, to which the affidavit required by Section 1172 of this title is attached, which notifies the defendant that the issuance of a garnishee summons is requested and that ~~he~~ the defendant may object to the issuance of ~~such a~~ the summons by filing a written objection with the court clerk and delivering or mailing a copy to the plaintiff's attorney within five (5) days of the service of ~~said~~ the notice. The service of ~~such a~~ the notice on the defendant satisfies the notice requirement of Section 1174 of this title;

2. If no written objection is filed within the five-day period, and if the undertaking has been executed as provided herein, the court clerk shall issue the garnishee summons;

3. Should a written objection be filed within the five-day period, the court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at ~~such~~ the hearing, the plaintiff proves the probable merit of ~~his~~ the plaintiff's cause and the truth of the matters asserted in ~~his~~ the affidavit and if the plaintiff executes an undertaking, as provided herein, the court may issue the garnishee summons; and

4. An undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the clerk or the court and filed in the clerk's office, in a sum not less than double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which ~~he~~ the defendant may sustain by reason of ~~such~~ the garnishment, together with a reasonable attorney's fee, if the order be wrongfully obtained.

B. If the court finds that the defendant cannot be given notice as provided by paragraph 1 of subsection A of this section, although a reasonable effort was made to notify ~~him~~ the defendant, and at the

hearing the plaintiff proves the probable merit of ~~his~~ the plaintiff's cause of action and the truth of the matters asserted in ~~his~~ the affidavit and the plaintiff has executed an undertaking as provided herein, the court may issue a garnishee summons. ~~In such case~~ after which the defendant may move to have the garnishee summons quashed. Notice of ~~said~~ a motion to quash, with the date of the hearing, shall be served on the attorney for the plaintiff. The motion shall be heard promptly, and in any case within five (5) days after the date that it is filed. The court must grant the defendant's motion unless, at the hearing on defendant's motion, the plaintiff proves the probable merit of ~~his~~ the plaintiff's cause and the truth of the matters asserted in ~~his~~ the affidavit. The court clerk may issue an order to pay the money into the court after the hearing, at the direction of the court.

C. A prejudgment or postjudgment garnishment may be amended as in other civil actions. Upon request of the garnishor, alias or additional summons shall issue against the garnishee.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 1173, as amended by Section 4, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1173), is amended to read as follows:

Section 1173. A. Any judgment creditor may obtain a noncontinuing lien on earnings. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursements for travel expenses for state employees.

B. A noncontinuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

C. The form for the summons required by this section shall be prescribed by the Administrative Office of the Courts.

D. The summons shall be served upon the garnishee, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment, and request for hearing, and

claim for exemptions, in the manner provided for in Section 2004 of this title and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the ~~Office of the Administrative Director~~ Office of the Courts.

F. Within seven (7) days after the end of the defendant's then-current pay period or thirty (30) days from the date of service of the garnishment summons, whichever is earlier, the garnishee shall file the answer with the court clerk and the garnishee shall pay the amount withheld from the pay period to the judgment creditor's attorney or to the judgment creditor, if there is no attorney, with a copy of the answer which shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of the indebtedness or liability. When the garnishee shall be in doubt respecting ~~any such~~ the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other

person makes claim, at the garnishee's option, the names and addresses of ~~such~~ other claimants and, so far as known, the nature of the claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons to the extent the property is not exempt from garnishment.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee.

2. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.

I. 1. When a postjudgment noncontinuing earnings garnishment under Section 1173 of this title or a continuing earnings garnishment under Section 1173.4 of this title is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 1173.4, as amended by Section 6, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1173.4), is amended to read as follows:

Section 1173.4 A. Any judgment creditor may obtain a continuing lien on earnings. For the purposes of this section, "earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation, but does not include reimbursements for travel expenses for state employees.

B. A continuing earnings garnishment shall be commenced by filing the affidavit provided for by Section 1172 of this title.

C. The summons required by this section shall be on a form prescribed by the Administrative Office of the Courts.

D. The summons required by this section shall be served upon each of the garnishees, together with a copy of the judgment creditor's affidavit, a garnishee's answer form, notice of garnishment and request for hearing, and claim for exemptions, in the manner provided for in Section 2004 of this title and shall be returned with proof of service within ten (10) days of its date.

E. The garnishee's answer shall be on a form prescribed by the Administrative Office of the Courts.

F. Within seven (7) days after the end of each pay period, or, if the judgment debtor does not have regular pay periods, after any payment by the garnishee to the judgment debtor, the garnishee shall file an answer with the court clerk, and pay the amount withheld to the judgment creditor's attorney or to the judgment creditor, if

there is no attorney, together with a copy of the answer which shall state:

1. Whether the garnishee was the employer of the defendant named in the notice, ~~or~~ was indebted to the defendant, or was under any liability to the defendant ~~named in the notice~~ in any manner or upon any account for earnings, specifying the beginning and ending dates of the pay period, if applicable, existing at the time of the service of the affidavit and summons, the total amounts earned in the entire pay period, and all of the facts and circumstances necessary to a complete understanding of any indebtedness or liability. When the garnishee shall be in doubt respecting ~~any such~~ the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to the property, the facts and circumstances in the affidavit;

3. At the garnishee's option, any claim of exemption from execution on the part of the defendant or other objection known to the garnishee against the right of the judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee's option, the names and addresses of other claimants and, so far as known, the nature of their claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

G. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the

property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:

1. The total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;
2. The employment relationship is terminated;
3. The judgment against the defendant is vacated, modified, or satisfied in full;
4. The summons is dismissed; or
5. One hundred eighty (180) days from the date of service of the affidavit and summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty-day period even if the conclusion extends beyond the end of the period.

H. 1. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect.

2. a. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.
- b. The subsequent summons is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-fiftieth day of the previous garnishment lien.

I. 1. When a postjudgment wage garnishment under Section 1173 of this title or a continuing earnings garnishment under this

section is issued against a defendant already subject to an income assignment for child support, the garnishee shall determine the maximum percentage of the defendant's disposable earnings according to the provisions of Section 1171.2 of this title and then deduct from that percentage the actual percentage of the defendant's disposable earnings actually withheld under the income assignment. The resulting percentage shall be the amount to be withheld by the garnishee, not to exceed twenty-five percent (25%).

2. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

J. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.

K. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

SECTION 7. AMENDATORY 12 O.S. 1991, Section 1183, as amended by Section 15, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1183), is amended to read as follows:

Section 1183. The garnishee may be examined by the judgment creditor ~~either by deposition or by written interrogatories.~~ The

~~garnishee's deposition may be taken or interrogatories issued in any manner prescribed by the Oklahoma Discovery Code. Discovery may commence at any time after the service of the garnishee summons. If the garnishee ~~be~~ is a corporation, any principal officer thereof may be so examined. Within ~~twenty (20)~~ forty-five (45) days after the filing of the answer affidavit by the garnishee, the judgment creditor may ~~file and serve interrogatories on the garnishee~~ commence discovery concerning any matter contained in the answer or germane to any liability on the garnishee's part to the principal defendant. Attached to any ~~interrogatories~~ discovery request or notice of deposition shall be a statement that, upon failure to answer or appear, a judgment may be taken against the garnishee ~~as~~ by default for the amount of the judgment and costs which the judgment creditor shall recover or has recovered against the defendant in the principal action, together with costs of ~~such~~ the garnishment, and that the garnishee may also be proceeded against ~~as~~ for contempt. A copy of the ~~interrogatories~~ discovery request or notice of deposition and such statement shall be served upon the garnishee or the garnishee's attorney of record in the manner provided for service of summons ~~and shall be returned with proof of service within five (5) days from the date of filing or within ten (10) days when served in another county and the.~~ The garnishee within ~~ten (10)~~ twenty (20) days of the date of ~~such~~ service of a discovery request shall file with the clerk, and deliver by mail a copy to the judgment creditor or the judgment creditor's attorney of record, full and true answers to all ~~such interrogatories~~ discovery requests, verified by affidavit.~~

SECTION 8. AMENDATORY 12 O.S. 1991, Section 1190, as last amended by Section 16, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1998, Section 1190), is amended to read as follows:

Section 1190. A. A garnishee may deduct a fee of Ten Dollars (\$10.00) from the funds of the defendant in the garnishee's

possession as reimbursement for costs incurred in answering. If the garnishee is not indebted to the defendant and the garnishee's answer evidencing that is filed and mailed or delivered to the judgment creditor or to the judgment creditor's attorney of record, the garnishee may assess the judgment creditor a fee of Ten Dollars (\$10.00) as reimbursement for such costs.

B. 1. In case of the trial of any issue between the judgment creditor and any garnishee, costs shall be awarded to the plaintiff and against the garnishee, in addition to the garnishee's liability, if the judgment creditor recovered more than the garnishee admitted by the garnishee's answer; and if the garnishee does not, the garnishee shall recover costs of the judgment creditor. The costs shall include a reasonable attorney's fee to be taxed in favor of the prevailing party.

2. In the case of the trial to determine the amount to be recovered for due and owing child support, where any liability on the part of the garnishee is disclosed, costs shall be awarded to the judgment creditor and against the defendant, including a reasonable attorney's fee.

C. In all other cases under this article not expressly provided for, the court may, in its discretion, award costs in favor of or against any party.

D. In addition to sums otherwise due pursuant to a judgment, a judgment creditor, if represented by an attorney, shall be entitled to an attorney's fee of Fifty Dollars (\$50.00) for prosecuting a garnishment pursuant to subparagraphs b, c, and d of paragraph 2 of subsection B of Section 1171 of this title, and an attorney's fee of One Hundred Dollars (\$100.00) for prosecuting a garnishment pursuant to subparagraph e of paragraph 2 of subsection B of Section 1171 of this title, not to exceed a total of Two Hundred Fifty Dollars (\$250.00) in any twelve-month period.

SECTION 9. AMENDATORY Section 5, Chapter 194, O.S.L. 1995 (42 O.S. Supp. 1998, Section 49), is amended to read as follows:

Section 49. A. Every person, company, governmental entity, or trust authority operating an ambulance service within this state who or which performs ambulance services for any person injured as a result of the ~~negligence~~ negligent or intentional act of another shall, if the injured person asserts or maintains a claim against another person for damages on account of the injuries, have a lien for the amount due for the ambulance services upon any recovery or sum had or collected or to be collected by the injured person or the estate of the injured person in the event of the injured person's death, whether by judgment, settlement, or compromise. The lien shall be inferior to any lien or claim of any attorney ~~handling the claim for or on behalf of~~ representing the injured person. The lien shall not be applied or considered valid against any claim for amounts due pursuant to the provisions of Title 85 of the Oklahoma Statutes.

B. In addition to the lien provided for in subsection A of this section, every person, company, governmental entity, or trust authority operating an ambulance service within this state who or which performs ambulance services for any person injured as a result of the ~~negligence~~ negligent or intentional act of another shall have, if the injured person asserts or maintains a claim against an insurer, a lien for the amount due for the ambulance services upon any monies payable by the insurer to the injured person.

C. No lien which is provided for in this section shall be effective unless, before the payment of any monies to the injured person or the injured person's attorney or legal representative, as compensation for the injuries or death:

1. A written notice is sent setting forth an itemized statement of the amount claimed, identifying the insurance policy or policies

against which the lien is asserted, if any, and containing the name and address of the person, company, governmental entity, or trust authority claiming the lien, the injured person, and the person, firm, or corporation against whom the claim is made, is filed on the mechanic's and materialman's lien docket in the office of the county clerk of the county where the principal office of the claimant is located; and

2. The claimant sends, by registered or certified mail, postage prepaid, a copy of the notice with a statement of the date of filing thereof to the person, firm, or corporation against whom the claim is made and to the injured person. The claimant shall also send a copy of the notice to the attorney for the injured person, if the name and address of the attorney is known to the claimant.

D. ~~The liens provided for in~~ A lien created pursuant to this section may be enforced by in a civil action in the district court of the county where the lien was filed. An action shall be brought within one (1) year from the time of the filing of the lien with the county clerk after the person, company, governmental entity, or trust authority operating an ambulance service within this state becomes aware of a final judgment, settlement, or compromise of the claim asserted or maintained by or on behalf of the injured person. The practice, pleading, and proceedings in the action shall conform to the rules prescribed by the Oklahoma Pleading Code, ~~Section 2001 et seq. of Title 12 of the Oklahoma Statutes,~~ to the extent applicable.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50 of Title 42, unless there is created a duplication in numbering, reads as follows:

The amount of the lien provided for in Sections 43, 46, and 49 of Title 42 of the Oklahoma Statutes shall include the sums expended by the lienholder for filing pursuant to Section 32 of Title 28 of the Oklahoma Statutes, and the costs of mailing in an amount equal

to the mailing fee as provided in Section 152.1 of Title 28 of the Oklahoma Statutes.

SECTION 11. AMENDATORY 43 O.S. 1991, Section 209, is amended to read as follows:

Section 209. ~~If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support and recover the reasonable value thereof from the husband.~~ A husband and wife shall be jointly and severally liable for necessities provided to either spouse, or both, in good faith by third parties.

SECTION 12. REPEALER 12 O.S. 1991, Sections 690, 691, 692, 693, 694 and 695, are hereby repealed.

SECTION 13. This act shall become effective November 1, 1999.

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